

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
DEPT. OF THE TRIAL COURT

WILFRIED BRAUNACK,

*Plaintiff*

v.

AMAZON.COM, INC., a Delaware  
Corporation; AMAZON.COM SERVICES,  
LLC, a Delaware Corporation,

*Defendants.*

CIVIL ACTION NO.

JURY TRIAL DEMANDED

E-FILED 2/25/2021

**COMPLAINT**

Plaintiff Wilfried Braunack, by and through his undersigned attorneys, Quinn Emanuel Urquhart & Sullivan, LLP and Keller Lenkner LLC, for its Complaint against Defendants Amazon.com, Inc., and Amazon.com Services, LLC (collectively, “Amazon”) hereby states as follows.

**NATURE OF THE ACTION**

1. Amazon’s Alexa is a voice-activated service that Amazon provides through a variety of electronic devices, including the Amazon Echo line of products. People can activate an Alexa device by saying a “wake word”—like “Alexa”—and speak to Alexa-enabled devices about everything from the mundane (“Alexa, what’s the weather?”) to the deeply personal (“Alexa, what are the symptoms of depression?”).

2. While encouraging people to speak with Alexa, Amazon is recording *every* conversation she has with users. What’s more, Amazon also records conversations when no one is speaking with Alexa. Amazon makes these so-called “false wake” recordings when a user says a word that sounds like “Alexa” or another wake word—for example, Alexa will activate when a person says the word “election.”<sup>1</sup> Amazon designed Alexa devices to record and store

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<sup>1</sup> See Ars Technica, Uncovered: 1,000 Phrases that incorrectly trigger Alexa, Siri, and Google Assistant (July 1, 2020), at <https://arstechnica.com/information->

the private conversations it captures via “false wakes” just as they do conversations with Alexa, even though in “false wakes” users do not intend to activate Alexa.<sup>2</sup> After all, Alexa is one of the ways Amazon collects raw data on consumers.

3. Given their value to Amazon, the recordings might *never* be deleted unless the owner explicitly asks for them to be deleted—and sometimes not even then.<sup>3</sup> So, for each Alexa device in a household, Amazon may have thousands, if not tens of thousands, of permanent recordings in its database of not only the device owner’s voice but also the voices of their family members and anyone else who has ever spoken in a device’s presence. Amazon has thus built a massive database of billions of voice recordings containing the private details of millions of Americans.

4. Amazon in turn discloses the Alexa recordings to some unknown number of Amazon employees and contractors around the world, who use Alexa recordings to improve and develop new technologies for Amazon.<sup>4</sup> Indeed, Amazon now has the technology to listen to peoples’ conversations and make targeted advertisements based on what is said, or to hear when a person is sick so it can suggest purchasing cough drops.<sup>5</sup>

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[technology/2020/07/uncovered-1000-phrases-that-incorrectly-trigger-alexa-siri-and-google-assistant/](https://www.wired.com/story/alexas-1000-false-wake-words/).

<sup>2</sup> See Amazon, Enable Cloud-Based Wake Word Verification, at <https://developer.amazon.com/en-US/docs/alexa/alexa-voice-service/enable-cloud-based-wake-word-verification.html> (“Examples of words that might cause a false wake for ‘Alexa’ include ‘Alex’, ‘election’, ‘Alexis’.”).

<sup>3</sup> Press Release, Sen. Chris Coons, Amazon responds to Sen. Coons’ concerns about consumer privacy practices for Alexa devices (July 3, 2019), *available at* <https://www.coons.senate.gov/news/press-releases/amazon-responds-to-sen-coons-concerns-about-consumer-privacy-practices-for-alexa-devices> (“Amazon’s response leaves open the possibility that transcripts of user voice interactions with Alexa are not deleted from all of Amazon’s servers, even after a user has deleted a recording of his or her voice,” said Senator Coon. “What’s more, the extent to which this data is shared with third parties, and how those third parties use and control that information, is still unclear.”)

<sup>4</sup> See Answer at ¶ 17, *Tice v. Amazon* (No. 5:19-cv-01311), Dkt. No. 75.

<sup>5</sup> U.S. Patent No. 10,692,506 (filed Aug. 2, 2019) (“[I]t should be understood that there can be various situations in which voice data can be obtained. . . . If the user has authorized the home computer to listen for, and analyze, voice content from the user, the computer can obtain keywords

5. Amazon’s practice of recording Alexa users violates the laws of Massachusetts, which prohibit recording people who have not given prior authority for the recording. Massachusetts further prohibits the disclosure or use of such recordings.

6. Through its Alexa technology, Amazon recorded Mr. Braunack without his knowledge. Amazon used those recordings for its own financial gain, including by maintaining those recordings for disclosure to people around the world. Amazon’s conduct violates Massachusetts law.

### **PARTIES**

7. Plaintiff Wilfried Braunack (“Plaintiff”) is a natural person living in Milford, Massachusetts.

8. Defendant Amazon.com, Inc. is a Delaware corporation with its headquarters and principal place of business at 410 Terry Avenue North, Seattle, Washington.

9. Defendant Amazon.com Services, LLC (together with Amazon.com, Inc., “Defendants” or “Amazon”) is, upon information and belief, a Delaware corporation with its headquarters and principal place of business at 410 Terry Avenue North, Seattle, Washington.

10. Defendants maintain an office in Boston, Massachusetts, where employees responsible for the Alexa device work.<sup>6</sup>

### **JURISDICTION AND VENUE**

11. This Court has subject-matter jurisdiction over this dispute under M.G.L. c. 214, § 1 and M.G.L. c. 212, § 4.

12. This court has personal jurisdiction over Defendants under M.G.L. c. 223A, § 3. Defendants purposefully availed themselves of the Commonwealth’s laws by transacting

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from the conversation and automatically provide recommendations during the conversation, such as by displaying one or more Web sites offering mountain bikes, performing a search for mountain bikes, etc.”); U.S. Patent No. 10,096,319 (filed March 13, 2017) (showing Alexa hearing a person cough, then suggesting a purchase of cough drops and chicken soup receipts).

<sup>6</sup> The “Amazon Alexa team” is located in cities including Boston. “Alexa, can I work for you?”, Amazon, [https://amazon.jobs/en/business\\_categories/alexa](https://amazon.jobs/en/business_categories/alexa).

business here; by contracting or supplying services or things in Massachusetts; and by causing harm and injury to Plaintiff in Massachusetts.

13. Venue is proper in this Court pursuant to M.G.L. c. 223, § 1, 8 and because a substantial part of the acts and conduct that constitute the violations of law complained of herein occurred in the Commonwealth, substantial harm was incurred by the Plaintiff here, and the Defendants regularly transacted business in Massachusetts.

### **FACTUAL BACKGROUND**

#### ***Amazon and the Alexa Device***

14. After starting as an online book retailer, Amazon has grown into a dominant force in the retail, internet, and technology sectors. Amazon operates the world's leading e-commerce platform, with net sales of \$280 billion in 2019.<sup>7</sup> Amazon is the world's largest provider of cloud-computing services. According to some reports, 42% of the internet is powered by Amazon Web Services, which is more than double Microsoft, Google, and IBM combined.<sup>8</sup> And Amazon also provides other technology services such as Alexa, the world's leading voice-responsive personal-assistant technology.

15. In 2010, Amazon.com, Inc. started work on the Echo "smart speaker" and debuted the Alexa voice assistant on November 6, 2014, with sales commencing shortly thereafter. Since then, Amazon has launched various additional Echo products, including the Echo Dot, Echo Plus, Echo Sub, Echo Show, and Echo Input. Each Echo device contains a speaker, microphones, a small computer, internet connectivity, and the Alexa program.

16. Amazon subsequently added the Alexa program to other Amazon products such as the Amazon Fire TV digital media player and the Echo Frames eyeglasses. Amazon also

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<sup>7</sup> Form 10-K, Amazon.com Inc., <https://www.sec.gov/ix?doc=/Archives/edgar/data/1018724/000101872420000004/amzn-20191231x10k.htm>

<sup>8</sup> Matt Ward, *Amazon: The Company Consuming Consumers*, thinkgrowth.org (Jan. 29, 2018), <https://thinkgrowth.org/the-big-4-part-one-amazon-the-company-that-consumes-the-world-fb4679f10708> (last visited Feb. 1, 2021).

allows manufacturers of devices as varied as electrical outlets, lightbulbs, thermostats, and security cameras to offer Alexa integration, allowing users to control those third-party devices through Alexa. And Amazon also now allows manufacturers to offer devices with Alexa “built-in,” essentially allowing other speakers and devices to offer much of the functionality of an Echo or Echo Dot<sup>9</sup> (collectively, all devices featuring Alexa integration or functionality are referred to herein as “Alexa Devices”).

17. As of October 2018, Amazon had sold approximately 47 million Echo devices.<sup>10</sup> In January 2019, Amazon reported that over 100 million total devices had been sold with Alexa pre-installed.<sup>11</sup>

*Amazon unnecessarily records, retains, reviews, and releases users’ voices*

18. Alexa is a natural-language processing system designed to converse with people.<sup>12</sup> Alexa “listens” to people’s oral communications and responds to those communications in a simulated human voice.<sup>13</sup> People most frequently communicate with Alexa in their homes.

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<sup>9</sup> Alistair Charleton, *Which Cars Have Amazon Alexa Integration?*, Gearbrain (April 29, 2019), <https://www.gearbrain.com/which-cars-have-amazon-alexa-2525958778.html> (last visited Feb. 1, 2021); James Stables, *The Best Amazon Alexa Built-In Speakers*, The Ambient (Apr. 8, 2019), <https://www.the-ambient.com/guides/best-alexa-built-in-speakers-1196> (last visited Feb. 1, 2021); Dana Kerr and Ben Rubin, *Alexa is Coming to Sony Smart TVs*, CNET (Sept. 20, 2018, 11:27 a.m. EST), <https://www.cnet.com/news/alexa-is-coming-to-tvs-well-at-least-sony-smart-tvs/> (last visited Feb. 1, 2021); Jonathan Vanian, *Amazon Alexa is Now Available on HP, Acer, and Asus Computers*, Fortune (Jan. 8, 2018), <http://fortune.com/2018/01/08/amazon-alexa-hp-acer-asus/> (last visited Feb. 1, 2021).

<sup>10</sup> Brian Dumaine, *It Might Get Loud: Inside Silicon Valley’s Battle to Own Voice Tech*, Fortune (Oct. 24, 2018), <http://fortune.com/longform/amazon-google-apple-voice-recognition/> (last visited Feb. 1, 2021).

<sup>11</sup> Lucase Matney, *More Than 100 Million Alexa Devices Have Been Sold*, Tech Crunch (Jan. 4, 2019) <https://techcrunch.com/2019/01/04/more-than-100-million-alexa-devices-have-been-sold/> (last visited Feb. 1, 2021).

<sup>12</sup> “Alexa Skills Kit Glossary,” *Amazon.com*, available at <https://developer.amazon.com/en-US/docs/alexa/ask-overviews/alexa-skills-kit-glossary.html> (“There are several phrases users can say to **start a conversation with Alexa.**”) (emphasis added).

<sup>13</sup> “Understand How Users Interact with Skills,” *Amazon.com*, available at <https://developer.amazon.com/en-US/docs/alexa/ask-overviews/understanding-how-users->

19. Alexa Devices record and respond to communications immediately after an individual says a wake word (typically “Alexa” or “Echo”).<sup>14</sup> If the wake word is recognized, the Alexa Device—unlike some other smart devices—makes a permanent recording of the ensuing communication and transmits the recording to Amazon’s servers for interpretation and processing before receiving the relevant data back in response.

20. Amazon indefinitely stores a copy of that recording on its own servers for later analysis and commercial use, including refinement of the Alexa system, development of new technologies and services, and targeted advertising and recommendations.

21. Amazon uses machine learning to leverage the massive amount of data collected by Alexa Devices—including these permanent voice recordings—to constantly refine the natural language understanding underlying Alexa’s functionality. Recordings are also individually reviewed by Amazon employees and part-time contractors in locations as far flung as Costa Rica, India, and Romania.<sup>15</sup>

22. However, Amazon need not make a permanent audio recording for Alexa Devices to function. Although it would not be as commercially advantageous to Amazon, Alexa Devices could retain the audio communications only for the time period necessary to process them locally on the device then send only a digital query, rather than a voice recording, to Amazon’s servers. Indeed, Amazon developed a “Local Voice Control” feature for Alexa Devices that allows individuals to fulfill a limited set of requests on certain Alexa devices when the device is not connected to the internet.

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interact-with-skills.html (“The following sections provide examples and more detail around **how users communicate with Alexa** . . .”) (emphasis added).

<sup>14</sup> Matt Day, Giles Turner, and Natalia Drozdiak, *Amazon Workers Are Listening to What You Tell Alexa*, Bloomberg (Apr. 10, 2019, 5:34 p.m. CDT), <https://www.bloomberg.com/news/articles/2019-04-10/is-anyone-listening-to-you-on-alexa-a-global-team-reviews-audio> (last visited Feb. 1, 2021).

<sup>15</sup> *Id.*

23. Despite the technological options available, Amazon has strong commercial incentives to collect as many Alexa recordings as possible. From the outset, Amazon has been a company built on the relentless acquisition of consumer behavioral data, whether through its ubiquitous AWS offerings, its ever-expanding online storefront, its entertainment platforms, and now the Alexa Devices it uses as its ears in every home.

24. The collection of Alexa Device recordings is a natural extension of Amazon's *modus operandi*: collect as much consumer data as possible through any means possible, streamline the process so that consumers cannot or will not stop the collection, and use Amazon's massive size to leverage that data more effectively than any of its competitors.

25. Simply put, the more data Amazon collects, the more use it has for each incremental data point in its possession.

26. Amazon's decision to make Alexa integration available to third-party product manufacturers at no cost is entirely consistent with this scheme. While Amazon might have charged some companies a licensing fee for Alexa integration (which its partners would then be able to pass on to consumers who value the extra functionality), it offers that integration free of charge in order to facilitate the rapid adoption of Alexa Devices, the ubiquitous use of Alexa, and the resulting widespread collection of voice-recordings of millions of people.

***Amazon never obtained proper consent to record users' communications***

27. Massachusetts law makes it illegal to record a person who has not "given prior authority" to be recorded. Amazon purports to obtain consent to record individuals who set up an Alexa-enabled device through its terms and conditions. But Plaintiff Wilfried Braunack did not provide his consent to be recorded.

28. Amazon does not obtain actual consent to record users' voices. Amazon does not tell Alexa users it will keep an audio recording of everything they ask, either when an Alexa Device is first set up or at any time thereafter. Amazon does not tell users that their voice will be stored, analyzed, and exploited for Amazon's benefit. Amazon could disclose these things and ask users to explicitly agree to them, but it does not.

29. Amazon instead has buried in the Alexa terms and conditions an oblique reference to the fact that it is permanently recording what its users say. Users supposedly “agree” to these terms and conditions, but Amazon never actually obtains an affirmative confirmation that they agree, or even requires users to actually read them. Amazon does not present the agreement as a popup; does not require users to click a link to access it; and certainly does not require users to scroll through the document, acknowledge, and accept the language that Amazon contends provides actual notice. Even if Amazon had actually presented the terms upon which it now seeks to rely, that would not be sufficient because the description of how Alexa operates is deliberately vague and obfuscates the reality that Amazon is recording everything they say, storing these recordings, and monetizing the information.

*Massachusetts’s protection of its citizens’ privacy*

30. Massachusetts law recognizes the unique privacy interest implicated by the recording of someone’s voice. That privacy interest is all the more important in light of modern voiceprinting technology and the potentially invasive uses of big data by a company the size of Amazon.

31. In 1964, Massachusetts created a commission to study whether to strengthen the Commonwealth's prohibitions on electronic eavesdropping. The commission issued its final report in June of 1968, which found “that eavesdropping devices are readily available to members of the public from commercially available stores” and that these devices make it quite easy for even laypeople to use them “for purposes of illegally intercepting wire or oral communications.”<sup>16</sup>

32. The report recommended “that wiretapping and eavesdropping other than by law enforcement officers should be strictly prohibited,” and it proposed the adoption of an “all-party

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<sup>16</sup> Report of the Special Commission on Electronic Eavesdropping, 1968 Mass. Sen. Doc. No. 1132, at 6.

consent’ provision,” “which would require the consent of all parties to a conversation before that conversation could be recorded or otherwise electronically ‘intercepted.’”<sup>17</sup>

33. Within months, the Massachusetts legislature enacted M.G.L. c. 272, § 99, which states in its preamble “that the uncontrolled development and unrestricted use of modern electronic surveillance devices pose grave dangers to the privacy of all citizens of the commonwealth.” M.G.L. c. 272, § 99(A).

34. The statute goes on to give a right of action to “[a]ny aggrieved person whose oral or wire communications were intercepted, disclosed or used except as permitted or authorized by this section or whose personal or property interests or privacy were violated by means of an interception... against any person who so intercepts, discloses or uses such communications or who so violates his personal, property or privacy interest[.]” M.G.L. c. 272, § 99(Q).

#### *Plaintiff’s Use of an Alexa Device*

35. Plaintiff was at all times relevant to the allegations herein a citizen of the Commonwealth of Massachusetts.

36. Since March 21, 2019, Plaintiff has directly communicated with Alexa using an Alexa Device on various occasions. On information and belief, Plaintiff has also communicated with other individuals in the presence of an Alexa Device and been recorded by Alexa even when the parties did not intend to activate the device.

37. Amazon intentionally recorded Plaintiff’s communications, stored those recordings on its servers, and used the recordings of those communications for its own commercial benefit, including by sharing those recordings with contractors at locations around the world. Amazon did not inform Plaintiff that it would do that.

38. Plaintiff was unaware that upon hearing a wake word, an Alexa Device would record and indefinitely store the ensuing communications. Rather, Plaintiff reasonably expected that those Alexa communications would not be permanently recorded.

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<sup>17</sup> *Id.* at 9, 11.

39. Plaintiff never agreed to allow those at-home communications to be recorded. Amazon recorded Plaintiff's communications without Plaintiff's consent.

### **CAUSES OF ACTION**

#### ***Count One***

#### **Violation of M.G.L. c. 272, § 99**

40. Plaintiff incorporates by reference the foregoing allegations as if set fully set forth herein.

41. Amazon is a person as defined by M.G.L. c. 272, § 99(B)(13).

42. Plaintiff is an aggrieved person as defined by M.G.L. c. 272, § 99(B)(6).

43. An Alexa Device is an intercepting device as defined by M.G.L.c. 272, § 99(B)(3).

44. Plaintiff interacted with his Alexa Device.

45. Plaintiff's interactions with an Alexa Device are "oral communications" because they are speech, not transmitted over the public air waves by radio or another similar device.

46. When Plaintiff used an Alexa Device, Amazon intentionally created a recording of the oral communications, transmitted those recordings to Amazon's cloud servers, and retained copies of those recordings indefinitely at substantial cost.

47. Amazon programmed Alexa to intercept oral communications in Plaintiff's home, and intentionally used and endeavored to use the recordings of those communications for its own commercial benefit.

48. On information and belief, Amazon used and endeavored to use the recordings and the data derived from them to refine the functionality of its Alexa voice-assistant software, to develop new products and services, and to serve product and service recommendations to customers, among other users. When Amazon used and endeavored to use those recordings and derivative data, Amazon knew – as the developer of Alexa – that the recordings were collected from the interception of wire or oral communications.

49. On information and belief, Amazon intentionally disclosed recordings and derived data with Amazon employees and third-party contractors. When Amazon disclosed those recordings, Amazon knew – as the developer of Alexa – that the recordings were collected from the interception of wire or oral communications.

50. Amazon did not inform Plaintiff that it would intercept Plaintiff's wire or oral Alexa communications, that it would retain those recordings permanently, that it would use and endeavor to use those recordings for its commercial benefit, or that it would share those recordings with contractors at locations around the world.

51. Plaintiff did not expect, and had no reason to expect, that Amazon would intercept Plaintiff's wire or oral Alexa communications; retain those recordings permanently; use and endeavor to use those recordings for Amazon's commercial benefit; or share those recordings with contractors at locations around the world.

52. Rather Plaintiff reasonably expected that his Alexa communications would remain private.

53. Plaintiff never consented to Amazon intercepting Plaintiff's wire or oral Alexa communications; retaining those recordings permanently; using and endeavoring to use those recordings for Amazon's commercial benefit; or sharing those recordings with contractors at locations around the world.

54. Amazon created the recordings of Plaintiff intentionally, as Amazon has now publicly admitted that Amazon Devices are programmed to record every Alexa interaction.

55. As set forth above, Amazon intentionally intercepted, used, endeavored to use, and disclosed oral communications without the consent of all parties to those communications, in violation of M.G.L. c. 272, § 99.

56. Amazon's intentional and unlawful interception, use, attempted use, and disclosure violated Plaintiff's right to privacy in Plaintiff's communications, as protected by M.G.L. c. 272, § 99.

57. Amazon's intentional and unlawful recording caused Plaintiff injury to his dignity, wellbeing, and security.

58. Plaintiff seeks damages equal to \$39,800 under M.G.L. c. 272, § 99(Q)(1), as well as costs and reasonable attorneys' fees under M.G.L. c. 272, § 99(Q)(3). Plaintiff stipulates that he will demand no more than \$75,000 across all categories of relief, exclusive of interest and costs.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiff Wilfried Braunack respectfully prays for an order granting the following relief:

- A. Declaring that Amazon's actions, as set out above, violate M.G.L. c. 272, § 99;
- B. Awarding damages in an amount to be determined at trial;
- C. Awarding Plaintiff reasonable litigation expenses and attorneys' fees;
- D. Awarding Plaintiff pre- and post-judgment interest, to the extent allowable; and
- E. Awarding such other and further Relief as the Court deems reasonable and just.

### **JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: February 25, 2021

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